

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAMON SCOTT,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

**ORDER**

23 Civ. 3923 (KMK) (AEK)

**THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.<sup>1</sup>**

Petitioner Damon Scott, who is incarcerated at the Sing Sing Correctional Facility, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief from his New York State conviction on two grounds: (1) the trial court wrongfully admitted evidence of the uncharged crime of murder; and (2) the prosecution’s characterization of Petitioner as a “serial killer” was not harmless error. ECF No. 1 (“Petition”). On June 28, 2023, Petitioner filed a “Motion Requesting Stay of Proceedings.” ECF No. 9. Petitioner seeks a stay so that he can exhaust claims of ineffective assistance of trial counsel raised in a motion filed in state court pursuant to Section 440.10 of the New York Criminal Procedure Law, and then amend the Petition to add those claims. *Id.*

The Court ordered Respondent to file a response to the motion for a stay. ECF No. 10. Respondent filed a response, stating that he does not oppose the motion. ECF No. 12.

Accordingly, Petitioner’s motion requesting a stay of these proceedings is GRANTED. Once Petitioner has fully exhausted the claims raised in his § 440.10 motion in the state courts, Petitioner may return to this Court, and the Petition will be deemed amended to add the

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<sup>1</sup> The Honorable Kenneth M. Karas referred this matter to the undersigned on May 25, 2023. ECF No. 7.

ineffective assistance of trial counsel claims from the § 440.10 motion. Respondent's time to file his answer to the Petition is therefore stayed.

**Petitioner and Respondent are hereby directed to provide a status report regarding the progress of the proceedings in the state courts by no later than January 8, 2024. A schedule for Respondent's response to the Petition as amended, and Petitioner's reply (if any), will be put in place once the additional claims have been exhausted.**

The Clerk of Court is respectfully directed mark the motion at ECF No. 9 as GRANTED, and to mail a copy of this order to the *pro se* Petitioner.

Dated: July 7, 2023  
White Plains, New York

**SO ORDERED.**



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ANDREW E. KRAUSE  
United States Magistrate Judge